DEPARTMENT OF INSURANCE

June 17, 2015
Bulletin 216
Payment of Undisputed ABA Treatment During Appeals Process

This bulletin is directed to all insurers issuing accident and sickness insurance policies, as defined at IC 27-8-5-1, health maintenance organizations (HMOs) as defined at IC 27-13-1-19, claim review agents and consultants as defined at IC 27-8-16, and utilization review agents as defined at IC 27-8-17-7 (collectively, "Health Insurance Payers"). The purpose of this bulletin is to clarify provisions of Indiana law and the Affordable Care Act (ACA) regarding the payment of benefits during the appeal process. For purposes of this bulletin, "appeal" or "appeals process" indicates the procedures set forth in IC 27-8-28, IC 27-8-29, IC 27-13-10, and/or IC 27-13-10.1 and associated administrative rules.

Under Indiana law, it is considered an unfair claim settlement practice for a company to fail to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Furthermore, IC 27-8-29-14 and IC 27-13-10.1-3 prevent a Health Insurance Payer from retaliating against individuals for exercising their rights to an external grievance review. It has come to the Department's attention that Health Insurance Payers may be discontinuing coverage of treatment during the appeals process, even when a portion of a treatment plan is undisputed. It is the Department's view that the undisputed portion of the plan constitutes a claim in which liability has become reasonably clear, that discontinuing all benefits during the appeals process may be retaliatory, and that any undisputed portion of the treatment must be covered during the appeals process.

The Department has heard complaints regarding applied behavioral analysis (ABA) services provided for patients with autism spectrum disorder, in compliance with Bulletins 136 and 179. If a plan recommends 40 hours of services per week, and the Health Insurance Payer review indicates only 20 hours per week are medically necessary, the Health Insurance Payer must provide 20 hours per week until the difference is resolved through the appeals process.

This bulletin does not negate any requirement that a patient obtain prior authorization before a treatment or course of treatment is eligible for coverage or provisions in a policy limiting reimbursement for treatment. Furthermore, Health Insurance Payers may apply deadlines for submitting ongoing treatment plans that would allow time for the appeal process.

If the appeals process leads to a reversal of the Health Insurance Payer's determination, and the insured or contract holder has been receiving greater than the undisputed amount of ABA services during the appeal, the Department expects the Health Insurance Payer to pay for the services received from the effective date of the request, up to the amount of services actually received or the amount approved by the appeals process, whichever is lesser.

Companies found in violation of Indiana's Unfair Settlement Practices Act are subject to fines of up to $25,000 per act or violation, or $50,000 if the violation was knowing; and/or suspension or revocation of the company's certificate of authority. The Department encourages companies to review appeals in process to determine compliance with Indiana law as explained by this bulletin.

INDIANA DEPARTMENT OF INSURANCE
Stephen W. Robertson
Insurance Commissioner

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